
STAFF COMMENTS FOR PLANNING COMMISSION

MEETING DATE: October 15, 2007

SITE PLAN: **SP-07-0015**

TITLE: **201 East Diamond Avenue**

REQUEST: **PRELIMINARY/FINAL PLAN APPROVAL**
For 8535 Sq. Ft. Building (6425 sq. ft. of Office and
2110 sq. ft of Retail/Restaurant)

ZONE: CBD (Central Business District) Zone

Owner: 201 East Diamond Ave, LLC

Developer: Inter-Continental Group – Chuck Blessing, Jr.

Engineer: Macris, Hendricks & Glascock, P.A. – Brian Donnelly

Architect: Flanagan Architects, AIA – Tom Flanagan

STAFF LIAISON: Trudy Schwarz, Community Planning Director

Enclosures:

Staff Comments

- Exhibit 1: Location Aerial Map
- Exhibit 2: Application
- Exhibit 3: Minutes of the August 8, 2007, Planning Commission Meeting
- Exhibit 4: Floor plan for the first floor of the building
- Exhibit 5: LEED Checklist
- Exhibit 6: List of addresses notified
- Exhibit 7: Draft Automobile Parking Agreement
- Exhibit 8: Boundary Survey
- Exhibit 9: Site Plan
- Exhibit 10: Site Plan Detail Sheet
- Exhibit 11: Architectural Elevations
- Exhibit 12: Letter, received October 11, 2007, from Martin Hutt, Esq. for Fleigel Family with attachments
- Exhibit 13: Letter, received October 11, 2007, from Vince Berg, P.E. for Fleigel Family with attachments
- Exhibit 14: Letter, received October 11, 2007, from Ms. Tova Fleigel with attachments

STAFF COMMENTS

I. BACKGROUND:

The applicant is requesting Preliminary/Final Site Plan approval of a four-story building, which includes 8535 square feet of office and 2110 of retail or Class B restaurant (carry-out). This site plan is located in Olde Towne Gaithersburg on the property known as Chris' Restaurant at 201 East Diamond Avenue at its intersection with Park Avenue (Exhibit #1). The building is four stories in height (as opposed to the five stories in height reviewed at Concept Site Plan Review). The property is in the Central Business District (CBD) Zone.

II. SCOPE OF REVIEW:

Site plan approval is required by § 24-168 of the Zoning Ordinance, which states:

No building or structure shall be hereafter erected, moved, added to or structurally altered under circumstances which require the issuance of a building permit under this chapter, nor shall any use be established, altered or enlarged under circumstances which require the issuance of a use and occupancy permit under this chapter, upon any land, until a site development plan for the land upon which such building, structure or use is to be erected, moved, added to, altered, established or enlarged has been approved by the city planning commission.

In addition, this plan requires preliminary subdivision approval to create the parcel to place the building. Section 20-11, requires:

Every proposed plan for subdivision or resubdivision shall be submitted to the planning commission for tentative or conditional approval in the form of a preliminary subdivision plan prior to the submission of a final subdivision plat for recording ...

A preliminary site plan constitutes a preliminary subdivision. Section 20-41 states:

Approval of a preliminary site plan or schematic development plan (S.D.P.) shall constitute preliminary subdivision approval and the provisions of subsection 20-18(b) shall apply.

Accordingly, the application requests Preliminary/Final Site Plan approval from the Planning Commission. Reference Exhibit #2. This property is governed by Division 21, §§ 24-160F.1. through 24-160F.9., the CBD (Central Business District) Zone.

III. SITE PLAN ANALYSIS AND FINDINGS:

Site Characteristics

The site is relatively flat. Currently, the property is totally covered by the existing building and the proposed site plan proposes to cover the entire property. The applicant submitted a Natural Resource Inventory (NRI) on July 11, 2007. The NRI should be approved by the time of the meeting.

Master Plan

This property is in Sector 4 of the *Olde Towne District Master Plan* adopted in 2005, which recommends:

strengthening Olde Towne as a vibrant destination and the heart of civic life....to strengthen the desirability of Olde Towne as a regional destination, the Plan recommends a significant increase in development density . . . Sector 4 is characterized by qualities consistent with a traditional downtown- a variety of vibrant retail and restaurants along a "Main Street" . . . The historic charm of Olde Towne is one of its leading assets. . . infill structures are envisioned up to three stories in height, with ground floor retail uses and residential or office uses above, . . . Infill development should in final design reflect this colloquial and historic vernacular.

While the master plan specifically discusses infill development for this sector of Olde Towne, it does not discuss the subject of redevelopment. The plan also does not address the demolition of existing structures. Staff believes that to realize the master plan goals for Olde Towne as a whole, some redevelopment must occur in the area. The proposed plan could be viewed as a catalyst project for this part of East Diamond Avenue.

History

According to the Maryland Historical Trust Maryland Inventory of Historic Properties Form, this building was built in 1924. This building is also shown on the 1930 Sanborn maps of Gaithersburg. An addition in the rear was added in 1952; and during the 1960's the store was remodeled to cover the brick with T111 siding and a mansard roof.



August 2007

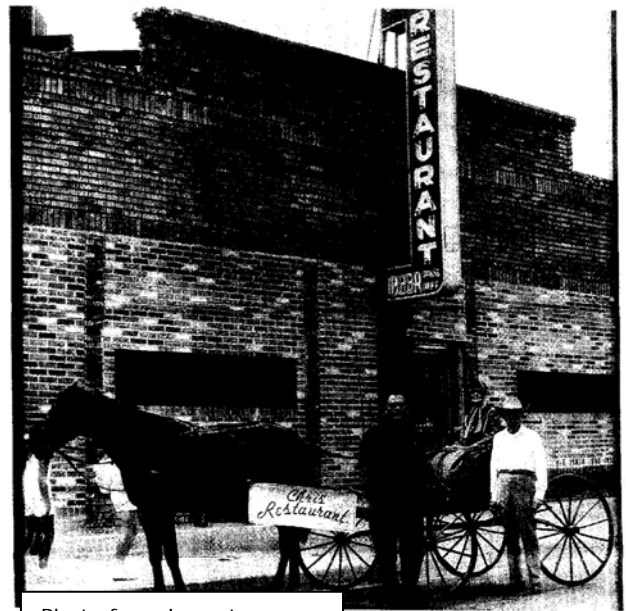


Photo from Inventory

The Historic Preservation Advisory Committee (HPAC) reviewed the historic significance of the building and found that the building should not be recommended for historic designation, finding that, while it "has character, interest, or value as part of the development, heritage or cultural characteristics of the city, county, state or nation," it is to a limited degree and does not warrant historic designation. The structure has lost its physical, architectural and historic integrity due to the many changes over the years

which included removal of the original parapet. The Historic District Commission (HDC) concurred with HPAC. They directed the City Manager issue a demolition permit. HPAC did recommend that materials of the existing building be salvaged or reused from the site where possible, that a photographic record be made of the interior and exterior for the City's archives. They also suggested that the developer of the new structure place a plaque recognizing the significance and history of the site.

At the August 8, 2007, Planning Commission meeting, the Commission reviewed the concept site plan (CSP-07-002) for a five-story, 10,956-square foot building, and approved it with the following five conditions:

1. Applicant is to verify the boundary (in Maryland State Plane Datum) of the property prior to the submission of a final site plan;
2. Applicant is to continue to work with City Staff to finalize the parking study and parking waiver request analysis and the use of the parking on Lot 5, the Thomas Lot;
3. Applicant is to provide a staging plan for the construction of the property at the time of submission of a final site plan application;
4. Applicant is to continue to work with staff to enhance the site features and streetscape design; and
5. Applicant is to enhance the architecture as it relates to height, mass and context.

(Please reference Exhibit #3.)

Surrounding Land Use and Zoning

This property is in the heart of Olde Towne and is surrounded by properties that are also zoned CBD (Central Business District). South of this property is a 15-foot alley and then the City parking lot known as Lot 5, the Thomas Lot. North and across the street are the properties which contain general commercial uses including Hairberdashery, Minuteman Press, and Wolfson's Department Store. West of the property is a 30-foot alley, known as the Park Avenue extension and the McMurtray Building which used to contain the Gaithersburg Floral Shop and now is currently vacant. The building east of the property houses the Guatemalteca Bakery.

Environmental/Forest Conservation Plan

The forest conservation plan shows that the applicant is required to plant one tree or pay a fee in lieu of the planting the tree. Environmental Services has suggested that they plant a street tree.

Adequate Public Facilities Ordinance

Transportation – The applicant has spoken with Engineering Director Mumpower of the Department of Public Works, Parks Maintenance and Engineering (DPWPM&E) and evaluated the impact of 8664 square feet of office and 2166 of a Class B Restaurant and have come to the conclusion that this will not generate more than 30 Peak Hour Trips. Therefore, a Traffic Impact Study (TIS) will not be required.

This site is also served daily by Montgomery County Ride On Bus Route #57 which runs between Shady Grove Metro and the Lakeforest Transit Station. In addition, the property is within 500 feet of the Maryland Rail Commuter (MARC) Train Station, which has nine trains in the morning traveling south to Union Station in Washington D.C. and eight trains in the afternoon/evening travel north to towards Brunswick, Maryland or Martinsburg, West Virginia.

Schools - Since the subject property is commercial it will have no impact on the school system.

Emergency Service – The Gaithersburg/Washington Grove Fire Station 8 (Montgomery Village Avenue) is located within the ten-minute response time to the property. The property is also served by Fire Station 28 (Shady Grove and Muncaster Mill Roads) within a ten-minute response time. Therefore the site complies with the requirements for the Adequate Public facilities requirements for Emergency Services.

Water and Sewer – A letter from WSSC (Exhibit #9) was submitted to the City concerning Water and Sewer. There is existing water and sewer to the property.

In conclusion, the site meets the tests required by the Article XV of the Zoning Ordinance and therefore, has sufficient public facilities available for the Planning Commission to review the site plan.

Site Plan

The applicant proposes to demolish the existing building and construct a new building in the existing footprint. The basement as proposed in CSP-07-002 has been removed, and there would be four levels or four stories above grade only. This will result in a four-story building, thus eliminating the need for a height waiver. The building has a total of 8535 square feet [6425 square feet of office on levels two, three and four (2141.7 per floor) and 2110 square feet of retail/restaurant on the first floor. Since the applicant currently does not have any tenants, the plan shows the highest restaurant use (Class B, "Carry-out, fastfood restaurants") for parking calculations in order to have the flexibility to lease this to either restaurant or retail. Factoring in the core area of the building and the latest building codes, the area that can be used for either retail or restaurant is approximately two-thirds the size of the previous restaurant. (Please Reference Exhibit #4.)

The applicant has submitted a boundary survey establishing the property lines for the site plan and the preliminary site plan. (Please Reference Exhibit #9.) This satisfies the first condition of the Concept Site Plan and also one of the notes on the site plan, Exhibit #10.

The site plan now shows a sidewalk parallel to the alley and the west side of the building. Although the sidewalk is in the public right of way, it will be constructed by the applicant. Both Public Works, Park Maintenance, and Engineering (DPWPM&E) staff and the Planning staff believe that this will improve the streetscape around the building. In addition, the applicant has inset the entry doors along East Diamond Avenue so the existing sidewalk will not be blocked by doors. DPWPM&E have also requested that a condition be added to require their approval of the site plan as they would like the engineer to add more details concerning the proposed sidewalks. Staff recommends a condition that the walk to be accessible for those with disabilities (there is a step shown on the plan), since this connects the handicap parking space in the City's Parking Lot 5 (also known as the Thomas Lot) to the elevator in the building. The sidewalk in the rear should also be brick paver detail similar to the rest of the parking lot.

PEPCO representatives have requested that all overhead utility connections be put underground, which would include but not be limited to electric, telephone and cable. The Washington Gas representative asked where the gas meter would be located. Staff recommends a condition that the meter be in an area inset to the building face.

Due to the fact that there will be work done not only in the alleys, but in East Diamond Avenue which will disrupt the flow of traffic, the applicant will be required to submit a traffic management plan for approval of DPWPM&E. Additionally, DPWPM&E is currently planning to make needed repairs to the retaining wall at the rear of Lot 5 in order to restore the structure and improve storm water run off. Given the fact that the applicant will need to coordinate with DPW and Planning and Code staff to enhance the public right of ways and streetscape, as well as coordinate with the retaining walls repairs, staff is suggesting that the construction and staging plan condition be carried over at final site review and be provided prior to site development permits. This will also allow the applicant to coordinate with staff and a general contractor to ensure minimal disruption to adjacent properties and East Diamond Avenue.

Parking

Planning staff has coordinated with the City Manager's Office to establish a parking agreement with the applicant. This project requires 56 parking spaces. Staff has requested that the applicant include the maximum potential use (restaurant) for the first floor in calculating the requirement. Initially, staff and the applicant believed a parking waiver would be necessary. However, staff has completed an analysis of the existing conditions in Lot 5 and the adjacent parking garage and has determined that provided a parking agreement is executed, a parking waiver is not necessary [§ 24-218(d)]. Staff is recommending a condition that the applicant execute the agreement prior to the issuance of site development permits. Essentially, the agreement will have binding language which will allow the applicant to use the parking garage for a majority of the required parking and allow the shared use of Lot 5 for the remainder.

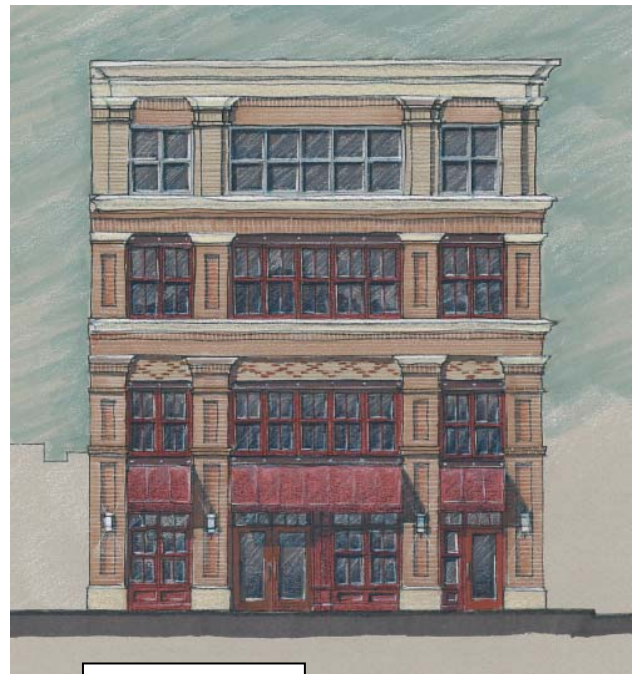
Staff has received correspondence from adjacent business owners. Since a restaurant has not operated at this site since September 2006, any current parking issues are obviously not a result of activity at this site and likely attributable to other properties..

Nevertheless, staff is cognizant of the concerns but believes these issues will be mitigated with the proposed plan.

Generally, most of the required parking is calculated for office use. Office users and employees typically park for extended periods in comparison with service or restaurant uses. The terms of the parking agreement will likely require all employees to use the parking garage just as the two existing office buildings operate. The balance of the parking requirement is the 1st floor use and as noted, staff has required the applicant to park this floor at the highest ratio or 16 spaces per 1,000 square feet. Lot 5 has than 57 parking spaces available and will absorb the balance. The parking agreement will not designate any specific location of the parking spaces in the garage or Lot 5 for specific users of this project. Execution of the lease agreement for parking in the garage and Lot 5 would be required prior to the issuance of any development permits. A draft parking agreement is included as Exhibit #7.

Architecture

At the concept review of this plan, the Planning Commission directed the applicant to enhance the architecture as it relates to height, mass and context. Below is a comparison of the East Diamond Avenue architectural elevations shown at Concept Review and the revised elevations:



SP-07-0015

The applicant has responded to the comments of both the Commission and HPAC by completely revising the architectural elevations as shown in Exhibit #11. Staff believes that both the Commission and HPAC will be impressed with the changes. HPAC will be reviewing these elevations at a special meeting on Tuesday, October 16, 2007. Staff will update the Commission with their recommendation at the Planning Commission meeting.

The applicant is combining different patterns of brick, a first level awning, wood panels and wood-framed doors, and precast concrete on three sides of the building to give this building a classic look. The south elevations show concrete masonry block (CMU) for most of the exterior but do not identify some of the materials on the plan. Staff would like to know the color and type of block, since we do not know when this will be covered. Staff is recommending the applicant work with staff to clarify and enhance the materials of this elevation.

IV. SUMMARY OF FINDINGS

Staff recommends approval of the site plan finding that the plan complies with the requirements of the CBD (Central Business District) Zone and § 24-170. The plan shows information concerning orderly placement of the building and sidewalks, adequate parking facilities by leasing the required number of spaces within 300 feet of the property. The proposed office and retail/restaurant uses are in keeping with the surrounding area and the use will not affect the health or safety of the residents within this block of Olde Towne. There are adequate public services to support the proposed use on the site.

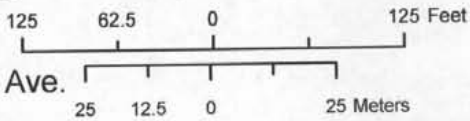
V. CONCLUSION

Staff recommends granting **SP-07-0015, 201 EAST DIAMOND AVENUE, PRELIMINARY/FINAL SITE PLAN APPROVAL, FINDING IT IN COMPLIANCE WITH FINDING IT IN COMPLIANCE WITH §§ 20-11 AND 24-170 OF THE CITY CODE, WITH THE FOLLOWING CONDITIONS:**

- 1. Applicant is to underground all utility connections to the building prior to the issuance of occupancy permits;**
- 2. Applicant is to revise the architectural plans to locate an inset for the placement of a gas meter, prior to the issuance of any building permits;**
- 3. Applicant is to revise the plans to add details about the sidewalk, sidewalk transition and accessibility needs for review and approval by staff and DPWPM&E, prior to the issuance of any permits;**
- 4. Applicant is to revise the South Elevation to clarify the materials to be used, prior to the issuance of a building permit;**
- 5. Applicant is to place a plaque recognizing the significance and history of the building on the building prior to bond release of the site development permit;**
- 6. Applicant shall negotiate and execute a parking agreement for 56 spaces with the City Manager's Office prior to the issuance of site development permits;**
- 7. Prior to the issuance of the site development permits, the applicant is to have the Forest Conservation Plan approved by Environment Services and Planning staff ; and**
- 8. Applicant shall finalize construction and staging plan in conjunction with all other public improvements with DPWPM&E and Planning and Code Administration staff prior to the issuance of site development permits.**

SP-07-0015

1 inch equals 124 feet



201 E. Diamond Ave.



MD State Plane
HPGN NAD 83/91

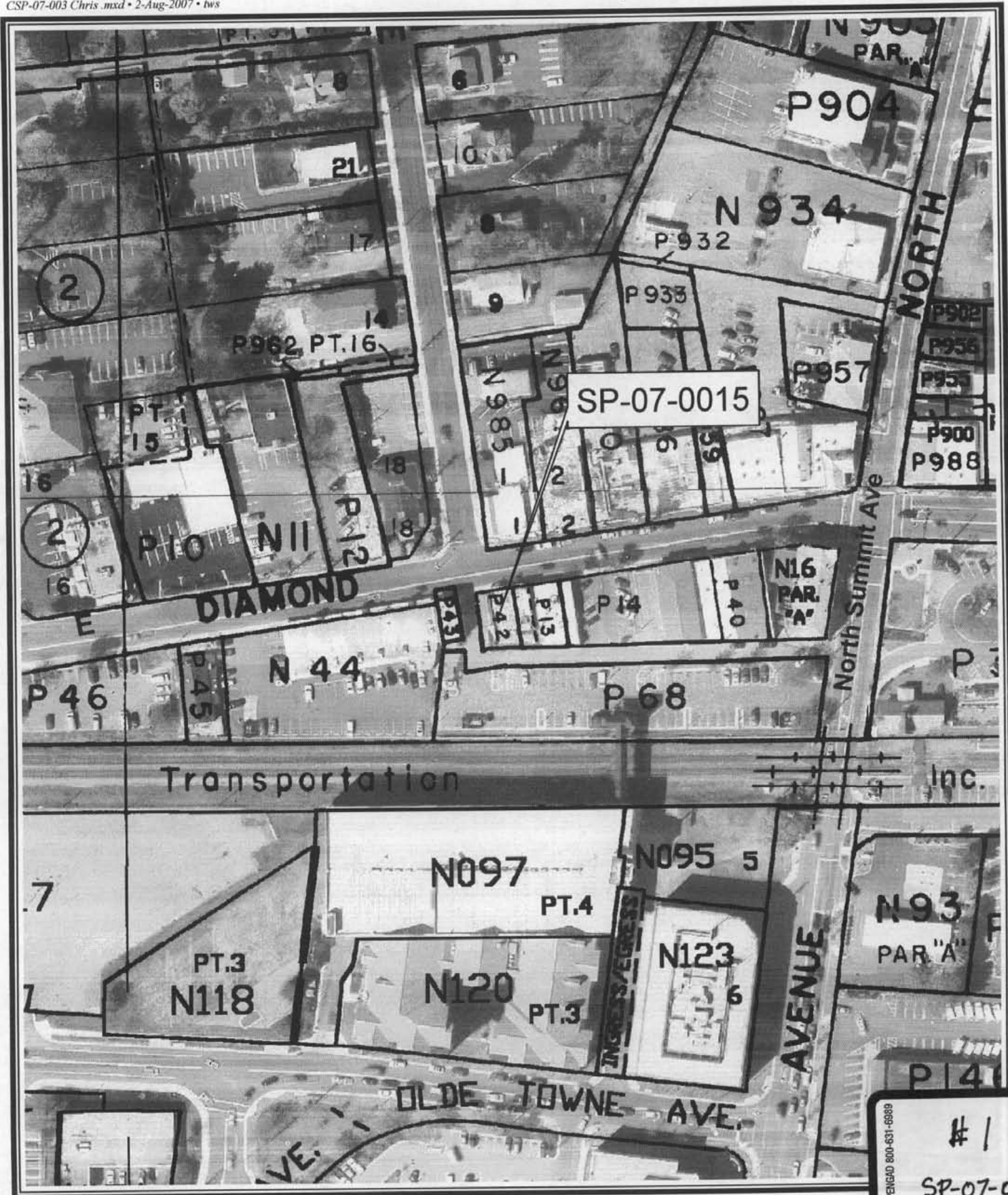
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City of Gaithersburg
Planning and Code Admin
31 S Summit Ave
Gaithersburg, MD 20877
(301) 258-6330
www.gaithersburgmd.gov

CSP-07-003 Chris.mxd • 2-Aug-2007 • tws



SITE PLAN APPLICATION

In accordance with Article III, Division 19, Section 24-160 D.9
and Article V of the City Code

Application #	SP-07-0015
Date Filed	9/7/07
Total Fee	740.00

- ☐ CONCEPT
☐ PRELIMINARY
☒ FINAL (MXD FEE APPLIES)
☐ SCHEMATIC DEVELOPMENT

1. SUBJECT PROPERTY

Project Name 201 East Diamond
 Street Address 201 East Diamond Avenue
 Zoning CBD Historic area designation ☐ Yes ☒ No
 Lot Parcel 42 Block Summit Hall
 Tax Identification Number (MUST BE FILLED IN) 00818110

2. APPLICANT

Name Same as Developer
 Street Address _____ Suite No. _____
 City _____ State _____ Zip Code _____
 Telephones: Work _____ Home _____

3. CITY PROJECT NUMBER

Original Site Plan Number (if applicable) _____
 Name of previously approved Final Plan (if applicable) Concept Plan # CSP-07-003

4. ARCHITECT/ENGINEER/DEVELOPER

Architect's Name Flanagan Architects, AIA Telephone 301-652-4811
 Architect's Maryland Registration Number _____ Suite No. 107
 Street Address 8140 Woodmont Ave. State MD Zip Code 20814
 City Bethesda

Engineer's Name Macris, Hendricks, & Glesrock, P.A. Telephone 301-670-0840
 Engineer's Maryland Registration Number _____ Suite No. 120
 Street Address 9220 Wightman Road State MD Zip Code 20896
 City Montgomery Village

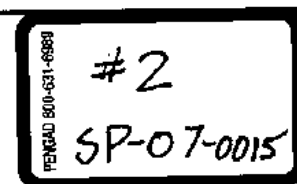
Developer's Name Inter-Continental Group Telephone 240-314-0365
 Street Address 51 Monroe Place Suite No. 1609
 City Rockville State MD Zip Code 20850
 Contact Person Chuck Blessing, Jr.

4. PROPERTY OWNER

Name 201 East Diamond Ave, LLC Suite No. _____
 Street Address 201 East Diamond Ave State MD Zip Code 20877
 City Gaithersburg
 Telephones: Work _____ Home _____

continued on reverse side

5/3/2000



6. PRIMARY USE☐ Mixed Use☒ Non-Residential☐ Residential**7. PROPOSED UNIT TYPE**☐ Mixed Use☒ Office/Professional☐ Restaurant☒ Retail/Commercial☐ Residential Multi-Family☐ Residential Single Family☐ Other**8. WORK DESCRIPTION**

Raze the Existing building and Construct a four story office with possible ground floor retail or restaurant (market Demand)

9. PROJECT DETAIL INFORMATION. Please supply the following information

DEVELOPMENT INFORMATION		REQUIRED	PROVIDED
1. Site (square feet)		—	2,228 sf
2. Site Area (acres)		—	0.091 acres
3. Total Number of Dwelling Units/Lots		—	1 lot
4. Height of Tallest Building		4 Stories	4 stories / 50'
5. Green Area (square feet)		—	—
6. Number of Dwelling Units/Acre		—	—
7. Lot Coverage (Percent)		—	94.7%
8. Green Area (Percent)		—	5.3%
9. Residential		—	—
a. Single Family Detached	# Units	—	—
b. Single Family Attached	# Units	—	—
c. Multi-Family Condo	# Units	—	—
d. Multi-Family Apartment	# Units	—	—
e. Other		—	—
10. Retail/Commercial	Sq. Ft.		
11. Restaurant Class: <input type="checkbox"/> A <input checked="" type="checkbox"/> B <input type="checkbox"/> C	Sq. Ft.		210 sf
12. Office/Professional	Sq. Ft.		6425 sf
13. Warehouse/Storage	Sq. Ft.		
14. Parking			
15. Shared Parking/Waiver			
16. Other			
17. Total			8535 sf

SUBMISSION REQUIREMENTS

- Set of plans per the respective checklist. Plans must be folded to 8 1/2 x 11."
- Completion of the table above.
- Completed checklist.
- Fee as applicable.

I have read and complied with the submission requirements and affirm that all statements contained herein are true and correct.

Applicant's Name (please print) *Brian Dannelly (Agent)*

Applicant's Signature *Brian Dannelly*

Date *9-6-07*

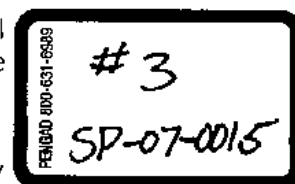
Daytime Telephone *304-670-0840*

1. Applicant is to comply with the conditions of Environmental Waiver Resolution R-81-07;
2. Applicant is to receive approval of the photometric and lighting plan, site plan, sediment control and final storm water management plan by DPWPM&E prior to the issuance of any permits;
3. Applicant is to receive approval of the final landscape and tree protection plan by the Planning and Code Administration and Environmental Affairs prior to the issuance of any permits;
4. Applicant to redesign Units #18 and #19 to obtain a six percent grade for the driveways prior to the issuance of any permits;
5. Applicant is to submit a lane marking and signage plan that will also delineate the fire lanes, to be approved by DPWPM&E prior to the issuance of any permits;
6. Applicant is to identify the height of the architectural drawings and add architectural grade shingles to the materials list for each house type; and
7. Applicant is to identify house types on the final site plan, prior to the issuance of any permits.

Vote: 5-0

CSP-07-002 -- 201 East Diamond Avenue
(Formerly Chris Steakhouse)
Four-Story Office Building
CONCEPT PLAN REVIEW

CBD Zone



Community Planning Director Schwarz located the property on an aerial photograph. She noted that the results of the August 2, 2007, Historic Preservation Advisory Committee (HPAC) review of this plan were not included in the Staff Comments, as the latter were prepared before the HPAC meeting. She reported the HPAC unanimously voted that the structure does not qualify for historic designation based on Zoning Ordinance § 24-226, although the structure partially meets the first criteria in terms of character, interest or value as part of the development and heritage of the City. She added that HPAC considered that the building has lost the architectural and historic integrity due to the many structural changes over the years.

Owner/Developer representative, Chuck Blessing, Jr., Inter-Continental Group, introduced the applicant's team.

Engineer for the applicant, Brian Donnelly, Macris, Hendricks and Glascock, P.A., presented and discussed the proposed plan, noting the building would fit to the limits of the lot on all four sides. He indicated that due to the small size of the lot, storm water management would not be required and a fee-in-lieu payment is proposed for forest conservation. He indicated that the first floor could be potentially retail use.

Mr. Blessing presented and discussed the proposed building elevations of all four sides and the streetscape, noting the building would be encroaching into the right-of-way of the existing

alley. He added that the existing basement would be utilized as well. Mr. Blessing discussed the floor plan and proposed sidewalk, and answered Chair Bauer's inquiries about a secondary means of egress and dumpster location.

The following was testimony from the public:

Richard Arkin, 121 Selby Street (speaking as an individual); Cathy Dryzygula, 16 Walker Avenue (speaking as an individual); Judy Christensen, 6 Walker Avenue (speaking for the Gaithersburg Historical Association Board); David Savage, 27 Walker Avenue; and Peggy Murray, 4 Walker Avenue, voiced concerns over the proposed building height, scale and materials, noting that the new building should reflect the vernacular.

Mr. Arkin called for a resubmission of the concept plan for a three-story building. Mrs. Christensen voiced the Gaithersburg Historical Association Board's recommendation for a height between two to three stories, in addition to the basement. Ms. Dryzygula was also concerned with an intense restaurant use on the first floor, as suggested by the size of the parking waiver request; the transition during construction, and the impact of the proposed building facade as viewed from Park Avenue. Mr. Savage favored a more traditional storefront for the building.

David Shayt, 15 Desellum Avenue, stated he was speaking as an individual, since the Olde Towne Advisory Committee, which he chairs, had not yet reviewed this plan. He indicated this is a good opportunity to further the revitalization of Olde Towne and to individualize the streetscape of Diamond Avenue, noting the particular importance of the T-location of the building with Park Avenue. He pointed out the proposed building is a logical improvement as it is located half-way between the existing higher structures, i.e., the Belt Building and the tower at the Fire Station.

However, Mr. Shayt voiced concerns over the proposed materials and narrow sidewalk. He called for more articulation on the facade, noting it needs more urbane aspects and more interest at the corner with wrap around features, e.g., a bay at the base. He suggested modifying the first story to provide more of a sidewalk experience with increased width and landscaping.

Community Planning Director Schwarz noted that a discussion of the building height and the height definition in the CBD Zone were not included in the Staff Comments posted on the City's website. She indicated that based on Zoning Ordinance § 24-160F.4.(a), it is City staff's opinion that the applicant would need a height waiver for five stories, which would include the basement. In response to Chair Bauer's comment on the Master Plan guideline of three stories, Director Ossont pointed out that the Master Plan does not reference the infill redevelopment of this and other locations in Olde Towne. Mrs. Schwarz voiced staff's recommendation for concept approval, subject to conditions that she listed.

Chair Bauer voiced his position to encourage the project to go forward, noting he would be in favor of granting a four-story height waiver to support a high-quality redevelopment building. He pointed out that this location demands a context-driven building, with special attention to the first floor, with awnings, windows, etc., and voiced his strong concern that the proposal lacks the urban detailing so needed in Olde Towne. He considered the concerns expressed over the building size and noted this could be mitigated with architectural finesse. He stressed the need for a wider front sidewalk and additional sidewalks to the side and rear, noting this is a precedent-setting project for Olde Towne.

Commissioner Hopkins was very concerned with the aesthetic appearance of the proposed building. However, he indicated he would support a fourth story as long as the roofline is significantly improved, suggesting dormers, windows, etc. Commissioner Kaufman shared the

above comments, noting this location is critical and demands a more interesting structure, original to Olde Towne. Vice-Chair Levy was additionally concerned over the height and modern look of the building, as well as the need for a second entrance in the rear. Commissioner Winborne did not support four stories in height, nor the architectural style proposed, noting it is not in keeping with the area.

At Chair Bauer's request, Director Ossont discussed issues relating to parking and staging of construction. Chair Bauer noted that this project should be subject to separate preliminary and final plan reviews. The Commission discussed language modifications to staff's recommended conditions and, noting that Condition 4 should be removed for concept plan approval and re-incorporated for preliminary plan review, moved as follows:

Vice-Chair Levy moved, seconded by Commissioner Kaufman, to grant CSP-07-002 - 201 East Diamond Avenue, CONCEPT PLAN APPROVAL, with the following conditions:

1. Applicant is to verify the boundary (in Maryland State Plain Datum) of the property prior to the submission of a final site plan;
2. Applicant is to continue to work with City Staff to finalize the parking study and parking waiver request analysis and the use of the parking on Lot 5, the Thomas Lot;
3. Applicant is to provide a staging plan for the construction of the property at the time of submission of a final site plan application;
4. Applicant is to continue to work with staff to enhance the site features and streetscape design; and
5. Applicant is to enhance the architecture as it relates to height, mass and context.

Vote: 5-0

IV. FROM THE COMMISSION

Vice-Chair Levy

Asked that applicants be given instructions that in making their presentations before the Commission, they identify the exhibits provided in the information packet that are pertinent to their presentation.

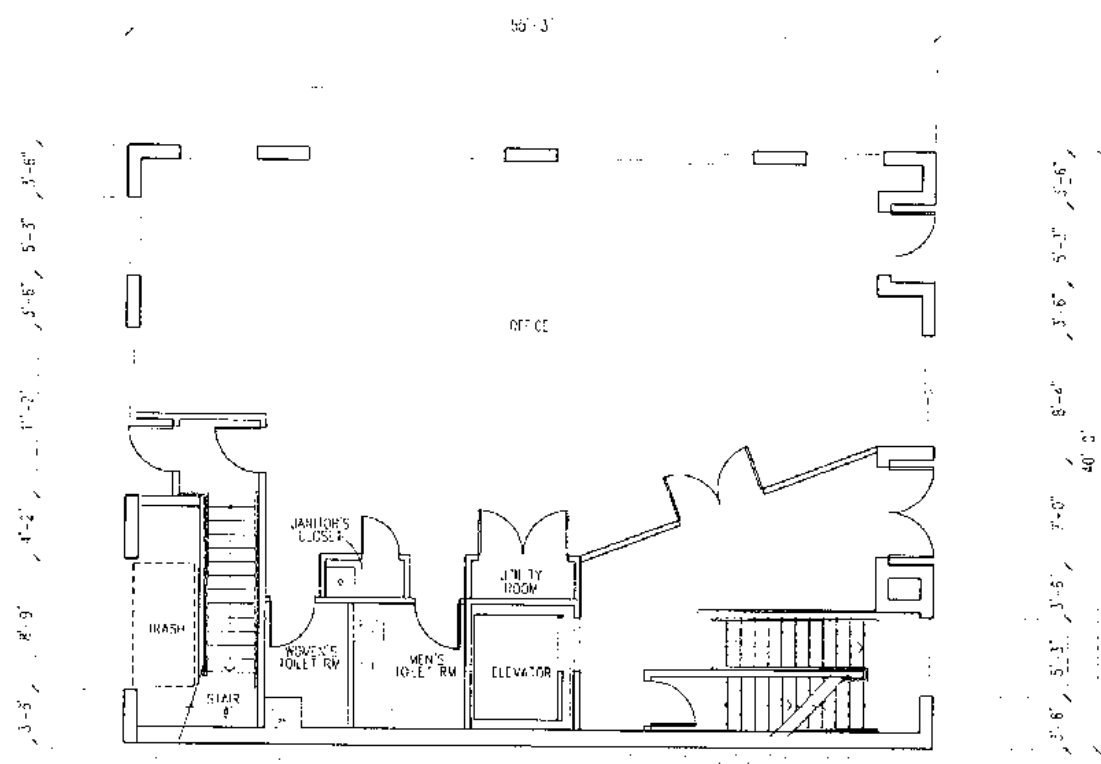
V. FROM STAFF

Planning and Code Administration Director Ossont

Referenced a previous action item regarding sheds on the parking lot at Kentlands Square, noting it has been removed.

Community Planning Director Schwarz

Reviewed upcoming meetings and events scheduled in September and October.



1ST FLOOR PLAN - PROPOSED

SCALE 1/8" = 1'-0"

800-631-6389
#4
SP-07-0015

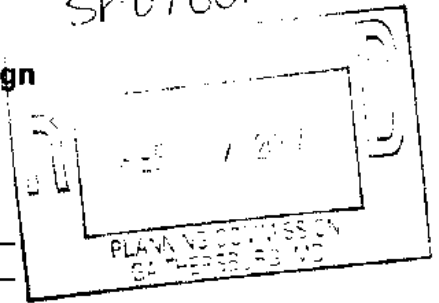




Leadership in Energy and Environmental Design LEED™ Version 2.1 Project Checklist

SP-070015

Project Name: 201 East Diamond
Tax ID: 00318110
Address: 201 East Diamond Ave



For more information regarding LEED™, refer to the US Green Building Council website at <http://www.usgbc.org>

Yes ? No

303 Sustainable Sites 14 Points

Y	Prereq 1	Erosion & Sedimentation Control	Required
X	Credit 1	Site Selection	1
	Credit 2	Urban Redevelopment	1
	Credit 3	Brownfield Redevelopment	1
	Credit 4.1	Alternative Transportation, Public Transportation Access	1
X	Credit 4.2	Alternative Transportation, Bicycle Storage & Changing Rooms	1
	Credit 4.3	Alternative Transportation, Alternative Fuel Vehicles	1
X	Credit 4.4	Alternative Transportation, Parking Capacity and Carpooling	1
	Credit 5.1	Reduced Site Disturbance, Protect or Restore Open Space	1
	Credit 5.2	Reduced Site Disturbance, Development Footprint	1
X	Credit 6.1	Stormwater Management, Rate and Quantity	1
	Credit 6.2	Stormwater Management, Treatment	1
	Credit 7.1	Landscape & Exterior Design to Reduce Heat Islands, Non-Roof	1
	Credit 7.2	Landscape & Exterior Design to Reduce Heat Islands, Roof	1
X	Credit 8	Light Pollution Reduction	1

Yes ? No

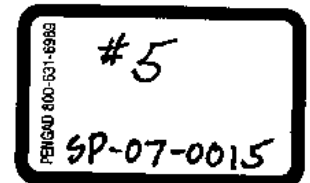
221 Water Efficiency 5 Points

	Credit 1.1	Water Efficient Landscaping, Reduce by 50%	1
X	Credit 1.2	Water Efficient Landscaping, No Potable Use or No Irrigation	1
	Credit 2	Innovative Wastewater Technologies	1
X	Credit 3.1	Water Use Reduction, 20% Reduction	1
X	Credit 3.2	Water Use Reduction, 30% Reduction	1

Yes ? No

170 Energy & Atmosphere 17 Points

Y	Prereq 1	Fundamental Building Systems Commissioning	Required
Y	Prereq 2	Minimum Energy Performance	Required
Y	Prereq 3	CFC Reduction in HVAC&R Equipment	Required
X	Credit 1	Optimize Energy Performance	1 to 10
	Credit 2.1	Renewable Energy, 5%	1
	Credit 2.2	Renewable Energy, 10%	1
	Credit 2.3	Renewable Energy, 20%	1
	Credit 3	Additional Commissioning	1
	Credit 4	Ozone Depletion	1
	Credit 5	Measurement & Verification	1
X	Credit 6	Green Power	1



4	6	3
---	---	---

Materials & Resources

13 Points

[illegible]

- | Prereq | Storage & Collection of Recyclables | Required |
|------------|---|----------|
| Credit 1.1 | Building Reuse, Maintain 75% of Existing Shell | 1 |
| Credit 1.2 | Building Reuse, Maintain 100% of Shell | 1 |
| Credit 1.3 | Building Reuse, Maintain 100% Shell & 50% Non-Shell | 1 |
| Credit 2.1 | Construction Waste Management, Divert 50% | 1 |
| Credit 2.2 | Construction Waste Management, Divert 75% | 1 |
| Credit 3.1 | Resource Reuse, Specify 5% | 1 |
| Credit 3.2 | Resource Reuse, Specify 10% | 1 |
| Credit 4.1 | Recycled Content, Specify 5% (post-consumer + ½ post-industrial) | 1 |
| Credit 4.2 | Recycled Content, Specify 10% (post-consumer + ½ post-industrial) | 1 |
| Credit 5.1 | Local/Regional Materials, 20% Manufactured Locally | 1 |
| Credit 5.2 | Local/Regional Materials, of 20% Above, 50% Harvested Locally | 1 |
| Credit 6 | Rapidly Renewable Materials | 1 |
| Credit 7 | Certified Wood | 1 |

Yes ? No

Indoor Environmental Quality

15 Points

[illegible]

- | Prereq 1 | Minimum IAQ Performance | Required |
|------------|---|----------|
| Prereq 2 | Environmental Tobacco Smoke (ETS) Control | Required |
| Credit 1 | Carbon Dioxide (CO ₂) Monitoring | 1 |
| Credit 2 | Ventilation Effectiveness | 1 |
| Credit 3.1 | Construction IAQ Management Plan, During Construction | 1 |
| Credit 3.2 | Construction IAQ Management Plan, Before Occupancy | 1 |
| Credit 4.1 | Low-Emitting Materials, Adhesives & Sealants | 1 |
| Credit 4.2 | Low-Emitting Materials, Paints | 1 |
| Credit 4.3 | Low-Emitting Materials, Carpet | 1 |
| Credit 4.4 | Low-Emitting Materials, Composite Wood & Agrifiber | 1 |
| Credit 5 | Indoor Chemical & Pollutant Source Control | 1 |
| Credit 6.1 | Controllability of Systems, Perimeter | 1 |
| Credit 6.2 | Controllability of Systems, Non-Perimeter | 1 |
| Credit 7.1 | Thermal Comfort, Comply with ASHRAE 55-1992 | 1 |
| Credit 7.2 | Thermal Comfort, Permanent Monitoring System | 1 |
| Credit 8.1 | Daylight & Views, Daylight 75% of Spaces | 1 |
| Credit 8.2 | Daylight & Views, Views for 90% of Spaces | 1 |

Yes ? No

Innovation & Design Process

5 Points

	X	
	X	
	X	
	X	
		X

- | | | |
|------------|---|---|
| Credit 1.1 | Innovation in Design: Provide Specific Title | 1 |
| Credit 1.2 | Innovation in Design: Provide Specific Title | 1 |
| Credit 1.3 | Innovation in Design: Provide Specific Title | 1 |
| Credit 1.4 | Innovation in Design: Provide Specific Title | 1 |
| Credit 2 | LEED™ Accredited Professional | 1 |

Yes ? No

Project Totals (pre-certification estimates)

69 Points

Certified 26-32 points Silver 33-38 points Gold 39-51 points Platinum 52-69 points

SP-07-0015 - 2007-07-07

PINKAS & H R FLIEGEL
PO BOX 2022
SILVER SPRING MD 20915

MCCORMICK PROP LTD PTNSHP
116 E DIAMOND AVE
GAITHERSBURG MD 20877

MILTON MTRUST WALKER
108 CEDAR AVE
GAITHERSBURG MD 20877

EDNA W CRYSTAL
8200 ARODENE RD
BALTIMORE MD 21208

H FRANK & J A MCMURTRAY
20720 GOSHEN RD
GAITHERSBURG MD 20882

ISADORE & R H WOLFSON
C/O DELBE REAL ESTATE
5185 MACARTHUR BLVD NW #115
WASHINGTON DC 20016

201 EAST DIAMOND AVE LLC
201 E DIAMOND AVE
GAITHERSBURG MD 20877

WOLFSON'S
206 E DIAMOND AVE
GAITHERSBURG MD 20877

CARLOS & ANA L REYES
18650 WINDING CREEK PL
GERMANTOWN MD 20874

INTER-CONTINENTAL GROUP
51 MONROE PL SUITE 1609
ROCKVILLE MD 20850

JOHN STRUSTUSTEE THOMAS
17704 PARKRIDGE DR
GAITHERSBURG MD 20878

ANTHONYTRUST BONANNO
C/O PAMELA GEROUX
10799 FOREST EDGE CIR
NEW MARKET MD 21774

CITY OF GAITHERSBURG
31 S SUMMIT AVE
GAITHERSBURG MD 20877

CITY OF GAITHERSBURG
31 S SUMMIT AVE
GAITHERSBURG MD 20877

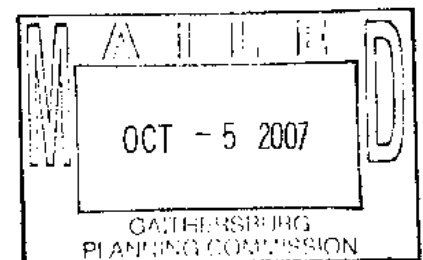
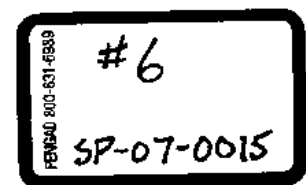
LONGCARE III L L C
C/O DANAC CORP
7501 WISCONSIN AVE STE 1120
BETHESDA MD 20814

CSXTRUSTANSPORTATION INC
500 WATER ST
JACKSONVILLE FL 32202

W LAWSON & C E KING
9300 EDGEWOOD DR
GAITHERSBURG MD 20877

MACRIS HENDRICKS & GLASCOCK PA
9220 WIGHTMAN RD SUITE 120
MONTGOMERY VILLAGE MD 20886

FLANAGAN ARCHITECTS AIA
8120 WOODMONT AVE SUITE 107
BETHESDA MD 20814



PC sent Agenda for 17-OCT-07

DRAFT

Automobile Parking Agreement

This [term] (the "Agreement") is entered into this [date] by and between City of Gaithersburg, Maryland (the "Lessor") and [location] (the "Lessee"). In consideration of the mutual covenants contained herein, Lessor and lessee agree as follows:

1. Lessor grants to Lessee, for the sole purpose of providing temporary automobile storage, use of ## (##) parking spaces within the parking facility located on Olde Towne Avenue in Gaithersburg, Maryland for the Term of this agreement. The parking facility is owned and operated by the Lessor. The ## spaces are located on the XX level of the parking garage; no spaces within other areas of the garage may be used without the specific permission of the Lessor.
2. Lessee shall pay Lessor a rental fee of [amount] for the term of this Agreement. Payment will be made prior to any use of the leased spaces via check made payable to the City of Gaithersburg, Maryland.
3. Lessee covenants to defend and indemnify Lessor, Its officers, agents, employees and save them harmless from and against any and all claims, actions, damages, liability, cost and expense, including reasonable attorney's fees, in connection with all losses arising out of any occurrence upon or at the Lessor's premises.
4. Lessee acknowledges that Lessor has no duty to provide security or oversight to the vehicles stored at the parking facility. Use of the parking facility is at Lessee's risk.
5. The Term of this Agreement is [date]. Rental may be prorated on a "per day" basis so long as Lessee notifies Lessor in writing of its intent to terminate this Agreement prior to the end of the Term and promptly removes all vehicles from the premises by the date indicated in Lessee's letter.

Lessee:

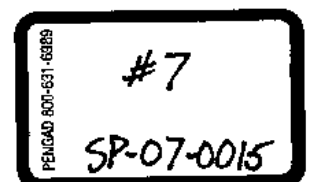
Lessor:

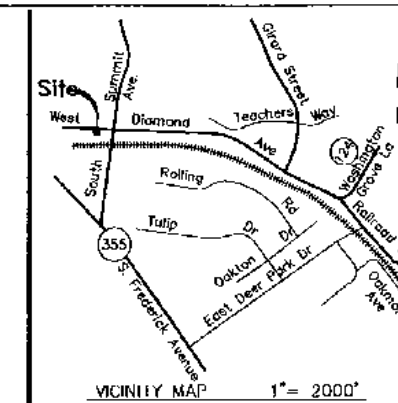
Authorized signatory on behalf
Of [company]

Authorized Signatory on
behalf of
City of Gaithersburg, MD

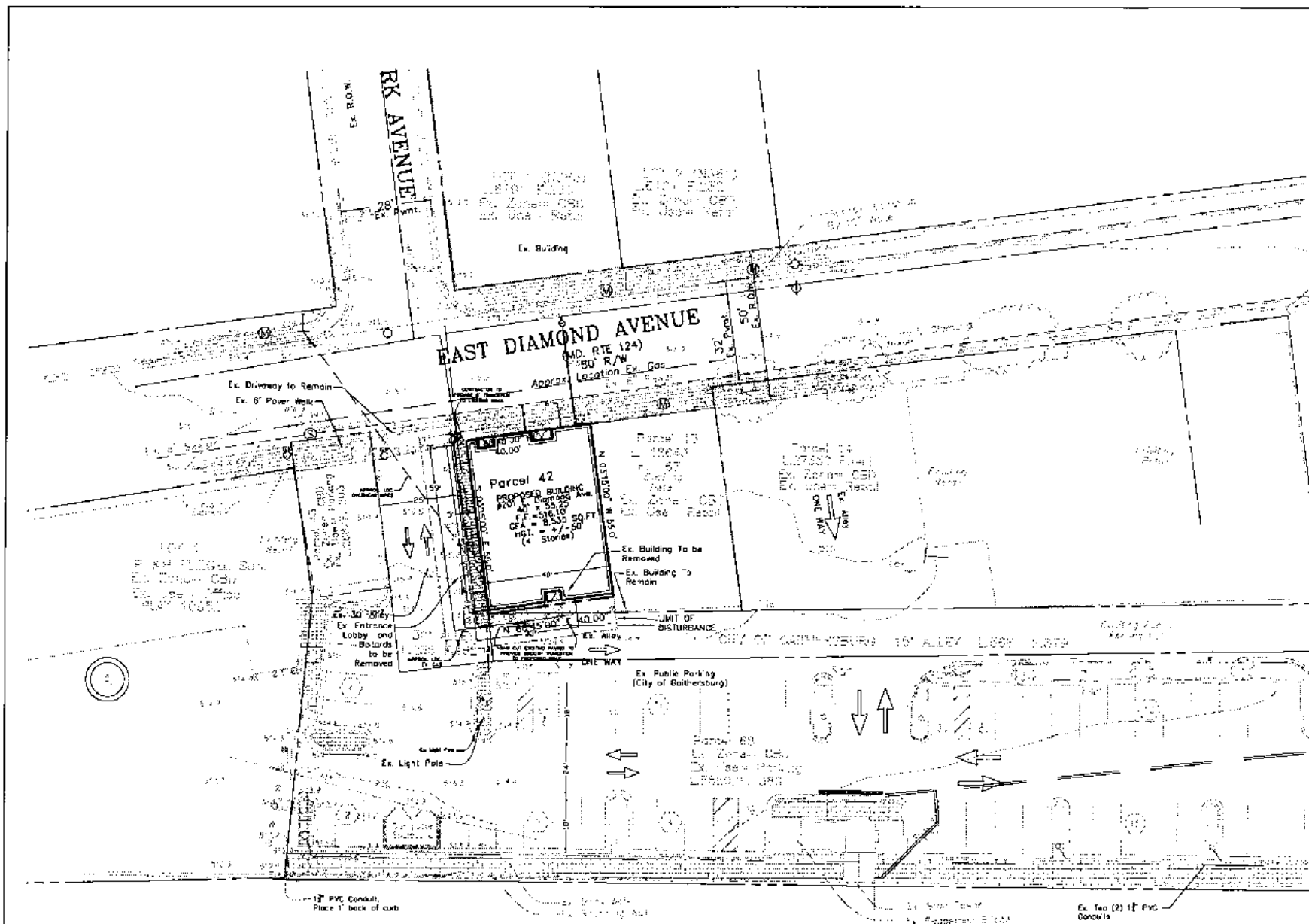
Dated:

Dated:





PENGAD 800-631-6989
#8
SP-07-0015



CSX TRANSPORTATION

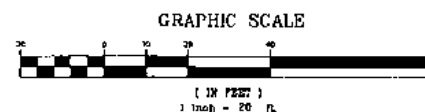
CITY OF GAITHERSBURG DEPARTMENT OF PUBLIC WORKS AND ENGINEERING	
FINAL APPROVAL	
DATE	BY

CITY OF GAITHERSBURG PLANNING COMMISSION 31 SOUTH SUNDY AVENUE, GAITHERSBURG, MARYLAND 20877	
SITE PLAN APPROVAL	
AT THE REGULARLY SCHEDULED MEETING OF THE PLANNING COMMISSION HELD ON	
APPLICATION NO. SP-07-0015	WAS GRANTED
FINAL SITE PLAN APPROVAL	
WORK () CONDITIONS	SEE S.D.A. 117.1
DATE	BY
NOTE: ANY REVISIONS TO SIGNED PLANS MUST BE SUBMITTED TO THE PLANNING COMMISSION	

Call "Miss Utility"
Telephone 1-800-257-7777
For Utility Locations At
Least 48 Hours Before
Beginning Construction

NOTES

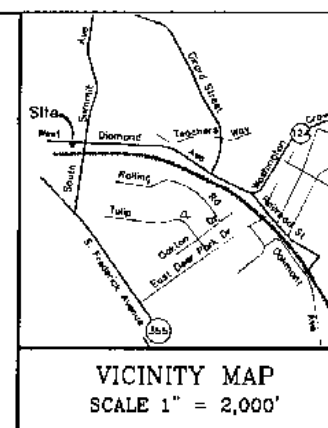
1. All perimeters, paving edges, and islands shall be curbed.
2. Curb, gutters, sidewalks, and paving shall be installed in such a manner as to provide positive drainage of all areas so there is no accumulation of surface water.
3. All paving, storm drainage, utilities, and improvements on this parcel are private and the maintenance is the responsibility of the owner.
4. The entire site including building, parking, amenities, landscaping, signs, etc. to be completed in one phase.
5. The City of Gaithersburg Planning Commission approved the Concept Plan for this CSP-07-003 on August 8, 2007.



ARCHITECT:
Flanagan Architects, A.I.A.
8120 Woodmont Avenue, Suite 107
Bethesda, Maryland
PHONE: (301) 652-4811
Attn: Thomas Flanagan

APPLICANT:
Inter-Continental Group
51 Monroe Place, Suite 1609
Rockville, MD 20850
PHONE: 240-314-0365
FAX: 240-314-0369
Attn: Chuck Blessing, Jr.

EXISTING	PROPOSED
	Paving
	Curb & Gutter
	Sign
	Utility Pole
	Lamp Post
	Post or Bulbhead
	Tree
	Electric
	Overhead Wires
	Sanitary Sewer
	Storm Drain
	Water Line
	Fire Hydrant
	Gas
	Telephone
	Ducting
	Concrete
	Spot Elevation
	Contour
	Marshline



DEVELOPMENT STANDARDS CBD ZONE

TRACT AREA *	2,842 sf or 0.05 AC. (per Tax Records)
TRACT AREA *	2,228 sf or 0.05 AC. (per Boundary Survey)
EXISTING ZONING	CBD, Central Business District
EXISTING USE	Restaurant
PROPOSED USE	OR FICR / GOR NO FICR (REF. 811)
TOTAL BUILDING AREA	8,535 sf
Increasing Maximum	REQUIRED ALLOWED
* Proposed Building Area Based on footprint of existing structure.	
Flood Boundary Determination to be made as part of the Final Site Plan or submittal to establish an exact development area.	
BUILDING SETBACKS (24-1607(b))	
ADJACENT TO E. Diamond - Front	0'
ADJACENT TO CBD ZONE - Side	0'
ADJACENT TO CBD ZONE - Rear	0'
BUILDING HEIGHT (24-1607(b))	4 STORIES
OFF STREET PARKING (24-218)	
Office (Floors 3-4)	1 space per 300 sf or 4,925 sf 24 4 spaces
Retail (Ground Floor)	1 space per 180 sf or 2,110 sf 11 7 spaces
Restaurant (Ground Floor)	16 spaces per 1,000 sf or 2,110 sf 32 7 spaces
(Class B - carry out)	
Total Required (Ground Floor Retail, 3 floors Office)	14 spaces
Total Required (Ground Floor Restaurant, 3 floors Office)	36 spaces

*A parking waiver to reduce the total number of parking spaces provided has been requested as part of this Detailed Site Plan Application. Parking will be provided within the existing Public Parking lot, owned and maintained by the City of Gaithersburg. A Final Parking count to be determined at time of use and occupancy permit based on market demand and leasing. A parking agreement will be prepared between the City of Gaithersburg and the Applicant prior to issuance of the Building Permit.

- THE PROPERTY IS NOT SUBJECT TO ADEQUATE PUBLIC UTILITIES REQUIREMENTS, SINCE THE DEVELOPMENT DOES NOT GENERATE MORE THAN 10 PEAK HOUR TRIPS.
- THE WATER & SEWER CATEGORY IS W-1 & S-1.
- THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN THEIR APPROXIMATE LOCATIONS AS PROVIDED BY THE UTILITY COMPANY RECORDS. THE EXACT LOCATION OF ALL UNDERGROUND UTILITIES SHALL BE VERIFIED BY "MISS UTILITY" (1-800-257-7777) PRIOR TO ANY EXCAVATION. MAJOR, MINOR, & GLASSOCK, P.A. DOES NOT EXPRESS OR IMPLY ANY GUARANTEE OR WARRANTY AS TO THE LOCATION OR EXISTENCE OF ANY UNDERGROUND UTILITY.

Stormwater Management

- THIS SITE IS WITHIN THE GREAT SENECA CREEK WATERSHED, STREAM CLASS I.
- THE TOTAL DISTURBED AREA FOR THE PROPOSED DEVELOPMENT IS LESS THAN 5,000 SF, THEREFORE THIS PROPERTY IS NOT SUBJECT TO THE REQUIREMENTS OF STORMWATER MANAGEMENT PER ARTICLE 3-SECTION 204.5.

Forest Conservation

- A FOREST CONSERVATION PLAN HAS BEEN SUBMITTED AS PART OF THE DETAILED SITE PLAN PACKAGE FOR REVIEW. THE FOREST CONSERVATION REQUIREMENTS WILL BE SATISFIED BY A FEE IN LIEU PAYMENT BASED ON THE TOTAL SITE AREA. A NOISE STUDY WILL BE PERFORMED BY THE APPLICANT PRIOR TO RELEASE OF THE BUILDING PERMIT. THE APPLICANT WILL INCORPORATE NOISE ATTENUATION MEASURES AS PART OF THE FINAL ARCHITECTURAL PLANS TO REDUCE THE NOISE IMPACT OF THE CSX RAILWAY.

TAX MAP FT 561

SP-07-0015

WSSC 223 NW 08

SITE DEVELOPMENT PLAN
OLDE TOWNE CITY OF GAITHERSBURG
201 East Diamond
PARCEL 42 (Liber 4838/Folio 827)
9TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND



Maoris, Hendricks & Glascock, P.A.
Engineers • Planners
Landscape Architects • Surveyors

9228 Wightman Road, Suite 120
Montgomery Village, Maryland
20888-1279

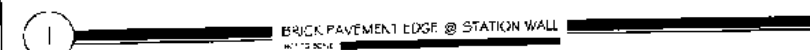
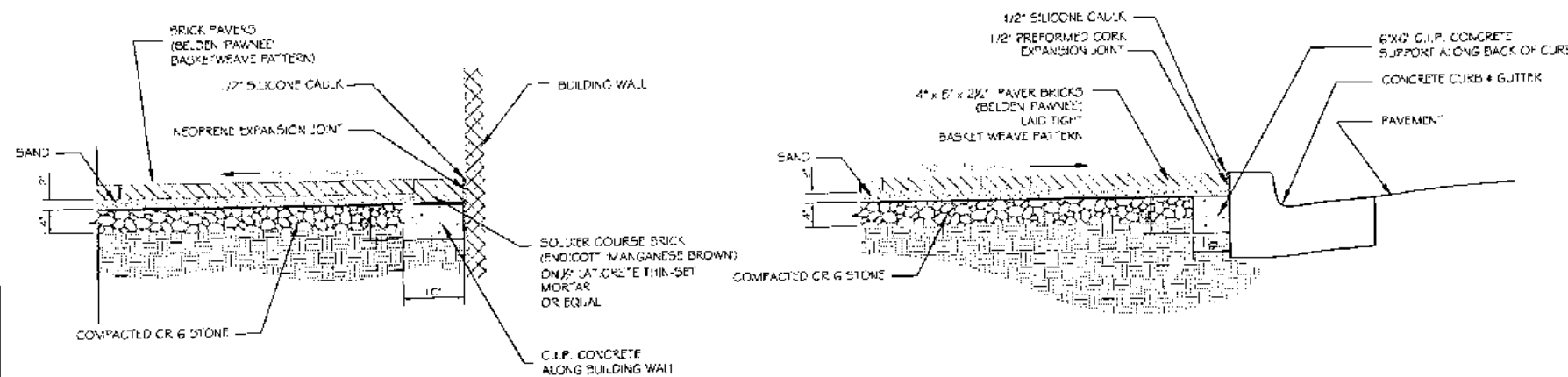
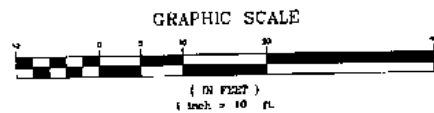
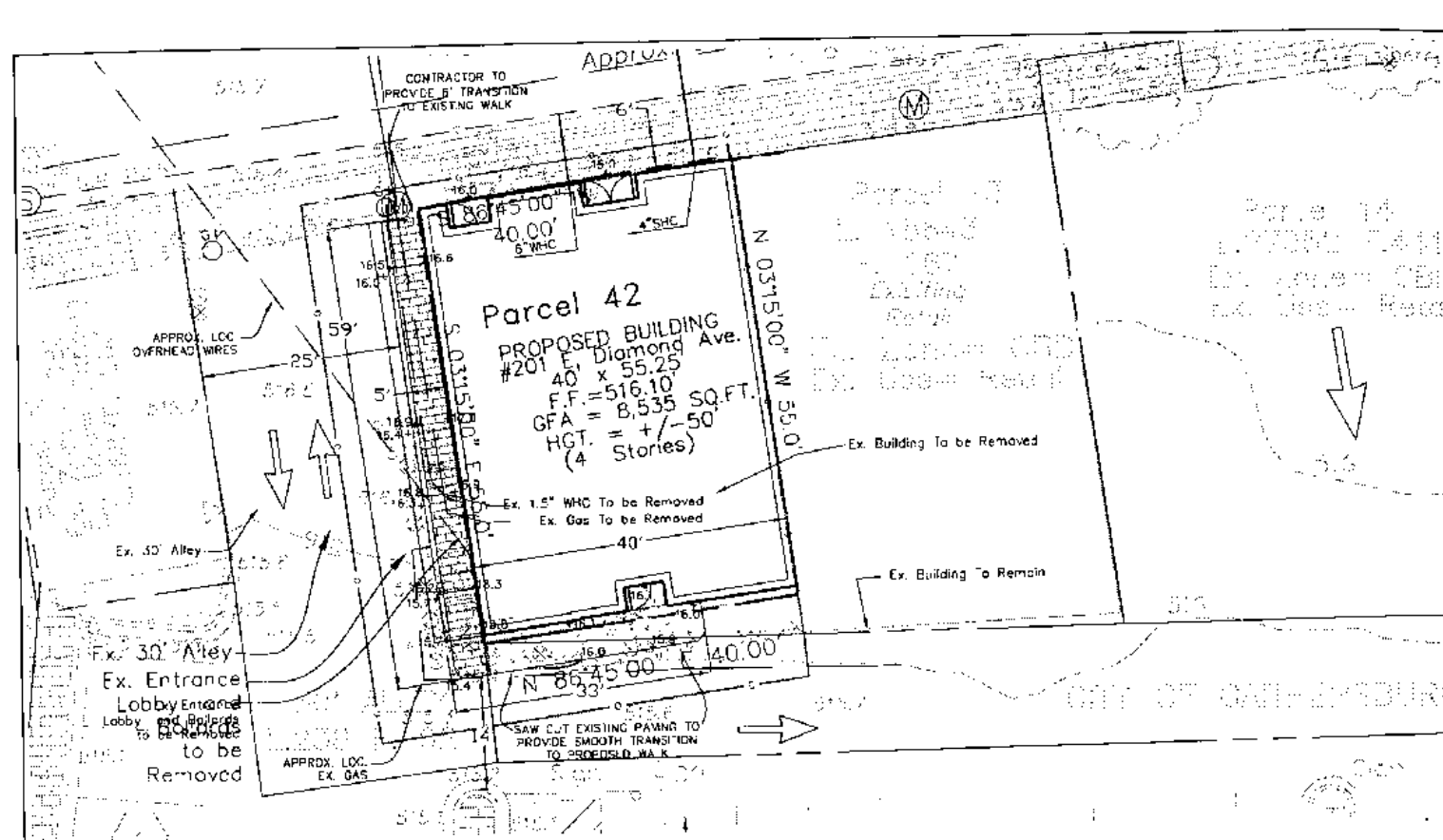
Phone: 301.670.0640
Fax: 301.948.0683
www.mhgpa.com

Proj. Mgr. BUD	Designer MWF
Date 10-4-07	Scale 1"=20'
Project No. 07-182-11	Sheet 1 of 2

PERMITS 800-631-6869

#9

SP-07-0015



NOTES

- All perimeters, paving edges, and islands shall be curbed.
- Curbs, gutters, sidewalks, and paving shall be installed in such a manner as to provide positive drainage of all areas so there is no accumulation of surface water.
- All paving, storm drainage, utilities, and improvements on this parcel are private and the maintenance is the responsibility of the owner.
- The entire site including building, parking, amenities, landscaping, signs, etc. to be completed in one phase.
- The City of Gaithersburg, Planning Commission approved the Concept Plan for this CSP-07-003 on August 8, 2007.

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 Telephone 1-800-257-7777
 For Utility Locations At
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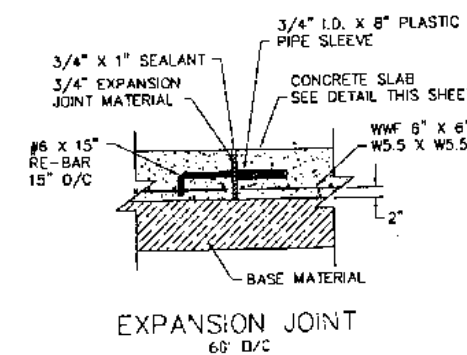
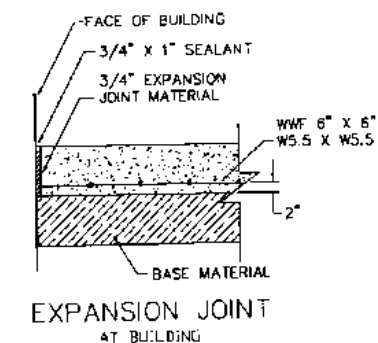
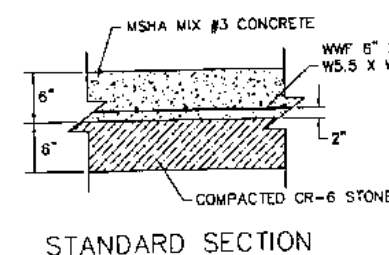
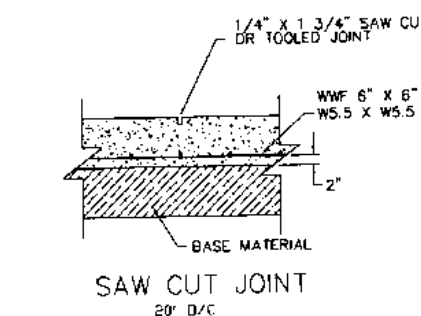
CITY OF GAITHERSBURG DEPARTMENT OF PUBLIC WORKS AND ENGINEERING	
FINAL APPROVAL	
DATE	BY

CITY OF GAITHERSBURG PLANNING COMMISSION 31 SOUTH RUMFORD AVENUE, GAITHERSBURG, MARYLAND 20878	
SITE PLAN APPROVAL	
AT THE REGULARLY SCHEDULED MEETINGS OF THE PLANNING COMMISSION HELD ON	
APPLICATION NO.	SP-07-0015 WAS GRANTED
FINAL SITE PLAN APPROVAL	
WITH	CONDITIONS SEE S.D.A. FIFTER
DATE	BY
NOTE: ANY REVISIONS TO SIGNED PLANS MUST BE REAPPROVED BY THE PLANNING COMMISSION	

APPLICANT:
 Inter-Continental Group
 51 Monroe Place, Suite 1609
 Rockville, MD 20850
 PHONE: 240-314-0365
 FAX: 240-314-0369
 Attn: Chuck Blessing, Jr.

ARCHITECT:
 Flanagan Architects, A.I.A.
 8120 Woodmont Avenue, Suite 107
 Bethesda, Maryland
 PHONE: (301) 652-4811
 Attn: Thomas Flanagan

CONCRETE PAVING DETAILS



TAX MAP FT 561

SP-07-0015

WSSC 223 NW 09

SITE DEVELOPMENT PLAN
 OLDE TOWNE CITY OF GAITHERSBURG
201 East Diamond
 PARCEL 42 (Liber 4838/Folio 827)

9TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND



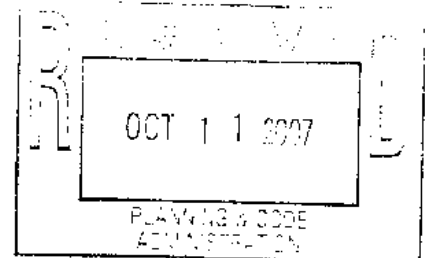
Maerls, Hendricks & Glascock, P.A.
 Engineers • Planners
 Landscape Architects • Surveyors

Prof. Mgr.	Design
B.J.	MWP
Date	Scale
10-4-07	1"=10'
Project No.	Sheet
07-182-11	2 of 2

#10
 SP-07-0015

October 11, 2007

John Bauer, Chairman
City of Gaithersburg Planning Commission
31 S Summit Avenue
Gaithersburg, Maryland



Re: Site Plan – 07-0015 - 201 East Diamond Avenue CBD Zone
(Formerly Chris Steakhouse)

Dear Mr. Chairman and Commissioners:

We represent the Fliegel family, owners of the shopping center property located at 109-119 E. Diamond Avenue (Lot 1, Block A, as shown on Exhibit 13 in CSP-07-003, a copy of which attached hereto and labeled as the Fliegel Property). Our clients do not oppose the redevelopment of the above-referenced property and our clients do not oppose the height waiver requested by the applicant. However, we do have concerns about the granting of the requested parking waiver and requested storm water management waiver without the Planning Commission including conditions (1) to protect our clients property from long standing problems, described below created from the subject property's existing parking waiver and (2) to protect my clients property from the storm water run off from the subject property as described below due the lack of any on-site storm water management controls to safely collect and safely discharge the storm water run off from the subject property so that it does not drain across the City's parking lot onto my client's property and damage an existing retaining wall and parking spaces. This issue and the condition(s) requested be made part of the Planning Commission's approval of the above-referenced site plan application is described in a separate letter to the Planning Commission from Berg Engineering, my client's civil engineer,

PARKING WAIVER:

Based upon the staff comments on the Concept Site Plan application heard by the Planning Commission on August 8, 2007, the applicant is requesting a parking waiver of 65 parking spaces for the proposed development on the subject property for a 2,166 square foot restaurant and 8,664 square feet of office space. 29.3 parking spaces are required for the office use and 34.7 parking spaces are required for the restaurant use.

Section 24-222A(1) of the City's Zoning Ordinance, entitled "Parking Waivers" provides:

John Bauer, Chairman

Page 2

October 11, 2007

(1) The planning commission may waive any requirements of this article, in whole or in part, which is necessary to accomplish the objectives of this article. The waiver may be granted, after a public meeting has been conducted, only upon a finding by the planning commission that such a waiver would not be detrimental to the public health, safety and general welfare. In conjunction with the granting of any waiver, the planning commission may attach such conditions or safeguards as it deems necessary to protect and enhance the public welfare, safety and welfare. (Emphasis Added)

The Applicant's stated basis for its request is that "necessary parking will be met by utilizing the City of Gaithersburg public parking facilities." One must assume that the Applicant is referring to the public parking provided on the City owned Lot 5 immediately adjacent to the Subject Property and/or the City's parking garage located across the rail road tracks from the subject property.

The staff comments in the Concept Site Plan application state that "Staff is evaluating the use of Lot 5 and the parking garage and would like to continue to evaluate the impact of this use in Olde Towne." While we do not presently know what, if anything, the staff has determined since the August 8, 2007 Planning Commission meeting on this matter, but unfortunately, it has been the on going experience of my clients for many years that the Chris Steak House customers did not use the City's parking garage, when parking was or not available on the City's parking lot (Lot 5) immediately adjacent to the subject property, but rather parked on my client's adjoining surface parking lot and walked to the subject property. Such a parking practice has adversely impacted the business of the tenants of my client's shopping center because there are no parking spaces available for their customers who go elsewhere for their goods and services. See the attached correspondence to my client from her tenants. The use of my client's parking lot, because of its closer proximity to the subject property, will only be intensified with the redevelopment of the subject property with not just a new restaurant, but with an additional 8,664 square feet of office space with its accompanying tenants, employees and business invitees.

Under the provisions of Section 24-222A (1), the Planning Commission may attach such conditions or safeguards as it deems necessary to protect and enhance the public health, safety and welfare. Pursuant to such authority we request, in order to minimize the impact upon my clients' property, the granting of the requested parking waiver will have that if the Planning Commission approves the parking waiver, that it imposes the following condition(s): which are commonly recommended off-site methods for mitigation required by the Montgomery County Planning Board with the consent of the off-site property owner in my twenty-seven years of experience.

ATTORNEYS

John Bauer, Chairman

Page 3

October 11, 2007

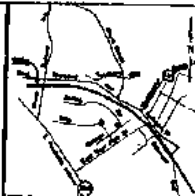
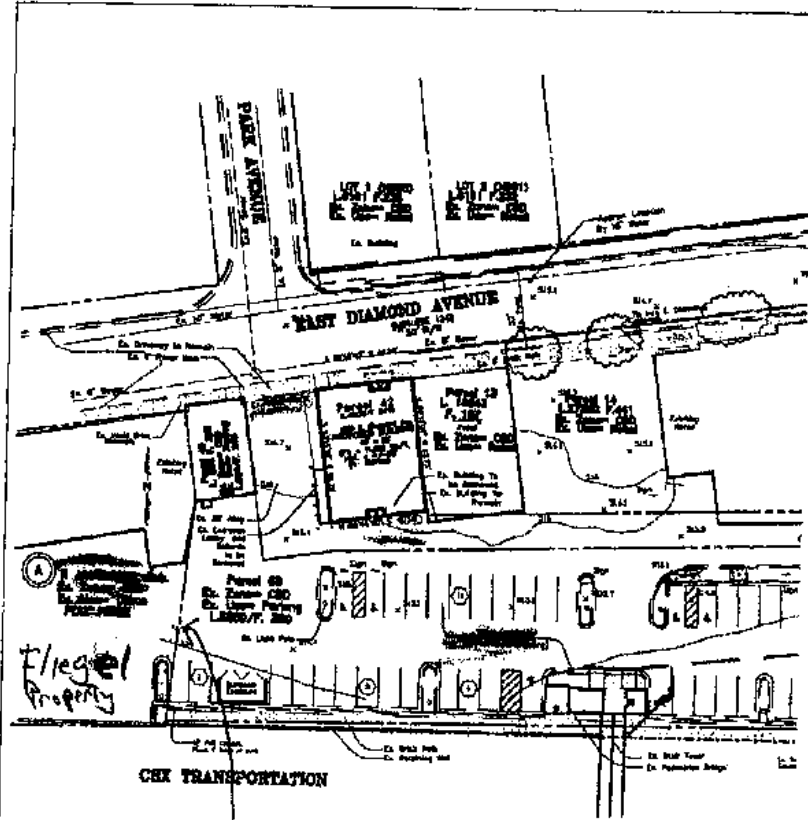
"1. The Applicant shall construct a permanent 6'-6" tall black chain link fence (to match the municipal garage fencing) along property line of the Fliegel Property, as shown on Exhibit 13, attached hereto.

2. During construction of the project on the subject property, the Applicant shall install a temporary construction fence along the property line of the Fliegel Property as shown on Exhibit 13 attached hereto to preclude its contractors, suppliers and materialmen from parking on the Fliegel Property or using it as a drop-off for building supplies and/or materials."

We respectfully request that the Planning Commission in its consideration of the subject Site Plan and associated waivers consider the impact our clients have been subject to by the existing use of the subject property and in granting approvals for the redevelopment of the subject property impose the conditions set forth above and in Berg Engineering's letter to the Planning Commission related to the requested parking waiver and storm water management waiver.

Very truly yours,


Martin J. Hutt



VICINITY MAP
SCALE 1" = 2,000'

REVISIONS

- 1. 100' wide right-of-way for the property.
- 2. 100' wide right-of-way for the property.
- 3. 100' wide right-of-way for the property.
- 4. 100' wide right-of-way for the property.
- 5. 100' wide right-of-way for the property.
- 6. 100' wide right-of-way for the property.
- 7. 100' wide right-of-way for the property.
- 8. 100' wide right-of-way for the property.
- 9. 100' wide right-of-way for the property.
- 10. 100' wide right-of-way for the property.
- 11. 100' wide right-of-way for the property.
- 12. 100' wide right-of-way for the property.
- 13. 100' wide right-of-way for the property.
- 14. 100' wide right-of-way for the property.
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Call "The Turkey"
Telephone 1-800-857-7777
For Utility Locations At
Least 48 Hours Before
Beginning Construction

ARCHITECT
Thompson Architects, A.L.L.
6120 Woodmont Avenue, Suite 107
Bethesda, Maryland
PHONE: (301) 552-4811
Attn: Thomas Thompson

APPLICANT
Miller-Carruthers Group
51 Monroe Place, Suite 105
Rockville, MD 20850
PHONE: 240-314-0325
FAX: 240-314-0388
Attn: Chuck Spang, Jr.



CSP-07-003
#13
8/6/07

CSP-07-002
0000 250 00 00

CONCEPT PLAN
OLD TOWNE CITY OF GAITHERSBURG
801 East Diamond
PARCEL 42 (Ular 4034/Fels 827)
8TH DISTRICT - MONTGOMERY COUNTY - MARYLAND

MHG M. H. G. & Co., Inc.
10000 Rockville Pike, Suite 100
Rockville, MD 20850
Phone: 301-761-1000
Fax: 301-761-1001
www.mhg.com

Project No.	801-003
Sheet No.	1 of 1
Scale	1" = 20'
Date	8/6/07
Drawn By	MB
Checked By	MB
Approved By	MB

Tova Fliegel

From: Edward Chi [echi25@msn.com]
Sent: Sunday, September 30, 2007 10:47 AM
To: Tova Fliegel
Subject: Fliegel Building - Parking Issues

Tova,

This is a letter to express my concerns with the parking situation at the Fliegel Building on East Diamond Avenue. Vocelli Pizza has been a tenant for one year now, and the parking situation has gone from bad to worse. For some reason our parking lot seems to be a haven for customers of Taquitos Pepitos even though they have their own location for parking, and many people will congregate in our lot even though they are not patrons of our building.

Normally this has not been an issue, but in the last six months, I have seen it start to affect my profit margin. I have had patrons tell me that that they were not able to park in our lot to pick up their orders, and also that they chosen not to come to my establishment for the fact that they would not be able to find parking. After a carryout/pickup analysis, I would estimate that I have lost 20% of my business due to this issue.

If there is any increased use of our lots by patrons of the restaurant or offices that replace Chris' Steakhouse, I fear the situation will put us over the edge. Because lot 5 is a two-hour lot, There is a history of customers and employees from all of the buildings on lot 5 parking on our lot where a 2-hour limit and patron parking seems to be unenforceable. If we can find a solution that only allows patrons of the Fliegel Building access to our parking lot, our shopping center would be a lot more successful. Please let me know if there is anything I can do to help solve these problems.

Thank You,
Edward Chi
Owner/Operator
Vocelli Pizza
115 East Diamond Avenue
Galtersburg, MD 20877
301-216-1912

Connect to the next generation of MSN Messenger. Get it now!

10/9/2007

October 6, 2007

Dear Mrs. Tova Fliegel,

I am writing to address the current parking space problem I face as business owner of the Cancun Restaurant.

I have been in this business location for nearly three years and parking for customers has always been a problem due to the low number of parking spaces available in this primarily business area. Neighboring business owners, their customers and other surrounding area customers often park in the spaces allocated for my business.

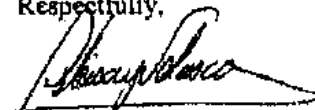
In addition to this, the area is growing and with that comes higher traffic and an increase demand for parking spaces. Because all these businesses are within walking distance from each other people arbitrarily park wherever they can find a space. In many instances violating and disregarding signs that indicate to them that parking is intended for a specific business.

The parking spaces at the Fliegel Building are intended for its customers and not for its surrounding and neighboring businesses. My business can not thrive if my customers become frustrated by the lack of parking spaces available to them. Customers will rather go elsewhere than to park their vehicle in a distant place away from them. Customers are greatly inconvenienced by the lack of parking spaces due to parking violators. They are especially affected if they have children, are senior citizens or have a handicap that makes it much harder for them to access my restaurant.

We live in a world where we pay for convenience because we do not have time. With that in mind, time is very valuable, and my business can not appropriately cater to the customers' needs if I do not make it convenient and easy for them to reach us. I need to be mindful and respectful of their time and can not expect for them to drive around trying to find a parking space.

I would like to ask you to please make note of this parking problem and that you kindly consider possible solutions to make neighboring businesses and their customers park accordingly, and not in the areas are that meant for the Cancun Restaurant customers.

Respectfully,



Tibisay Velasco

Cancun Restaurant Owner

ZODIAC EXPRESS INC.

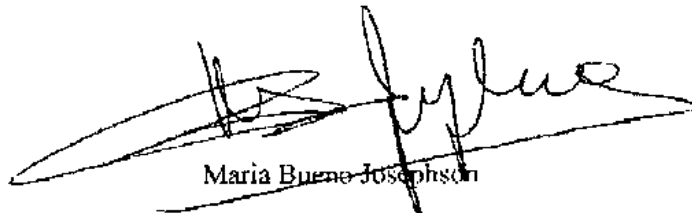
October 8, del 2007

To: Tova Fliegel
P.O.BOX 2022
Silver Spring MD 20915

To Whom it May Concern:

My name is Maria Buono; I am the owner of the Zodiac Express Inc. located at 109 East Diamond Ave. I have strong concerns over a letter that I recently read from the county regarding 3- story construction that is in the works of being built in the same shopping district. I adamantly oppose this plan for this particular area because parking is already very limited as it is. The county plans to waive parking for the new renovations, and that will seriously affect Zodiac business. Customers like the luxury of parking and going fast. Once that convenience is taken away, they will go else where with their business. I have been a business owner in Gaithersburg for many, many years and would appreciate appropriate consideration be taken regarding this matter.

Cordially,



Maria Buono Josephson

109 E. Diamond Ave
Gaithersburg, MD 20877
TEL . FAX: 301.947.8870

BERG ENGINEERING

Vincent H. Berg, P.E.

15716 BUENA VISTA DRIVE
DERWOOD, MARYLAND 20855

Phone (301) 948-1686

Fax (301) 519-0811

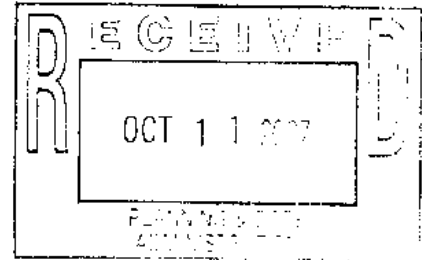
Civil Engineering
Permits
Planning
Expert Testimony

Sediment Control
Plan Review
Inspections
Value Engineering

Water Management
Technical Support
NPDES Permits
Project Management

October 11, 2007

Planning Commission
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20877



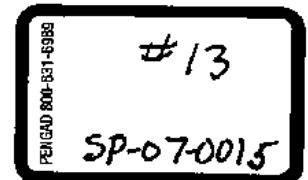
Re: Site Plan for 201 East Diamond Avenue (Chris' Restaurant), SP-07-015

Dear Planning Commission:

I have been retained by an adjacent property owner (Fliegel, N44) to prepare comments concerning the above development plan. This evaluation was conducted by Vincent H. Berg, a Professional Engineer in Maryland.

Mr. Berg has over 34 years of experience in the design, review and evaluation of stormwater management and drainage systems and subdivision plans in Montgomery County and in Maryland. His experience includes positions with the Montgomery County Department of Transportation (4 years, Engineer), Montgomery County Department of Environmental Protection (11 years, Project Engineer and Senior Engineer, stormwater management and sediment control), Montgomery County Park and Planning Commission (1 year, Environmental Planner), State of Maryland, Department of the Environment (4 years, Director of the Sediment and Stormwater Administration) and most recently as a private Civil Engineering and Environmental consultant (15 years).

The proposed development project on Parcel P42 contains 2,042 square feet, but the construction of this building will impact a much larger area including an area to stage construction, store construction equipment and store building materials. We are assuming that the City will grant a temporary Use Permit to the applicant to utilize a large portion of City Parking Lot 5 (Thomas Lot) behind the proposed building and the curb lane of East Diamond Avenue in front of the project.



The gross area needed to construct the project is likely to be much greater than 5,000 square feet. The associated parking required to support this project (65 spaces, approximately 15,000 square feet) which will further enlarge the impacted impervious area of this project, to approximately 20,000 square feet.

Based on my review of the LEED™ Project Checklist, dated 8/6/07 as item #11, this project is proposing to provide Stormwater Management Rate and Quantity control and Stormwater Management Treatment (quality control).

Based on the testimony of the Project's Civil Engineering firm (MHGPA) representative on August 8, 2007, a waiver of stormwater management would not be required, because the project is less than 5,000 square feet. Based on my review on Chapter 8, Stormwater Management, the following issue has been identified.

This project property is less than 5,000 square feet which would make it eligible for an exemption under Section 8-20 (3), but this project has some additional large impervious areas associated with the construction and development of this project. Under Section 8-19 (a), No person shall develop any land for residential, commercial, industrial or institutional uses without having provided for appropriate approved stormwater management measures that control or manage runoff from such developments, except as provided within this section. Stormwater management shall be provided when a site is developed or redeveloped.

Based on my long history of writing stormwater management laws and regulations and a review of the City ordinance, stormwater management controls are required for the development. If the City desires to assume the responsibility of the developer for stormwater management controls for the development and its associated impervious area, my client may be supportive of that waiver (under Section 8-21) of stormwater management if several conditions are imposed on the project.

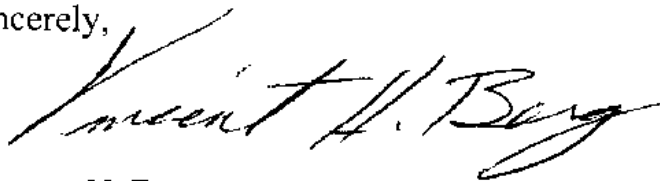
First, let me give you some background information. The developments along the south side of East Diamond Avenue and the City Parking Lot #5 have a long history of draining storm water to the rear towards the railroad. The discharge point for this subwatershed area has impacted the City's retaining wall and sidewalk which was constructed several years ago (see enclosed photo). The City's retaining wall and sidewalk are in a condition of near collapse and failure and will need to be rebuilt due to this uncontrolled storm water drainage. In addition, the Fliegel private parking lot and retaining wall are also being impacted by this uncontrolled drainage (see enclosed photo) and are in a severe state of collapse and near failure.

When the City built and then rebuilt Lot 5, no measures were provided to control the storm water runoff from the City Parking Lot and the surrounding private buildings. For decades this storm water problem has been dump onto the Fliegel private party and the City has taken no action to relieve this burden of public storm water from multiple buildings, including 201 East Diamond Avenue, discharging onto the private property (Parcel N44). The City actually built a curb cut opening from the City parking lot to directly discharge and dump storm water onto the Fliegel property.

We can support a waiver of stormwater management, if a condition (Sections 8-21 and 8-22) is set for this project to develop a drainage study and develop a drainage plan (inlets and pipes) and to construct the needed drainage system to resolve this long standing problem. This storm drain system must provide safe conveyance of storm water runoff, so that the private property of Parcel N44 is no longer impacted because the Fliegel parking lot and sections of the wall are unlikely to withstand another freeze-thaw cycle.

We hope that this decades old problem can be resolved by placing several conditions on the proposed development project at 201 East Diamond Avenue. I hope this information is helpful. Please call me at 301-948-1686 or 301-257-8362, if you have any questions.

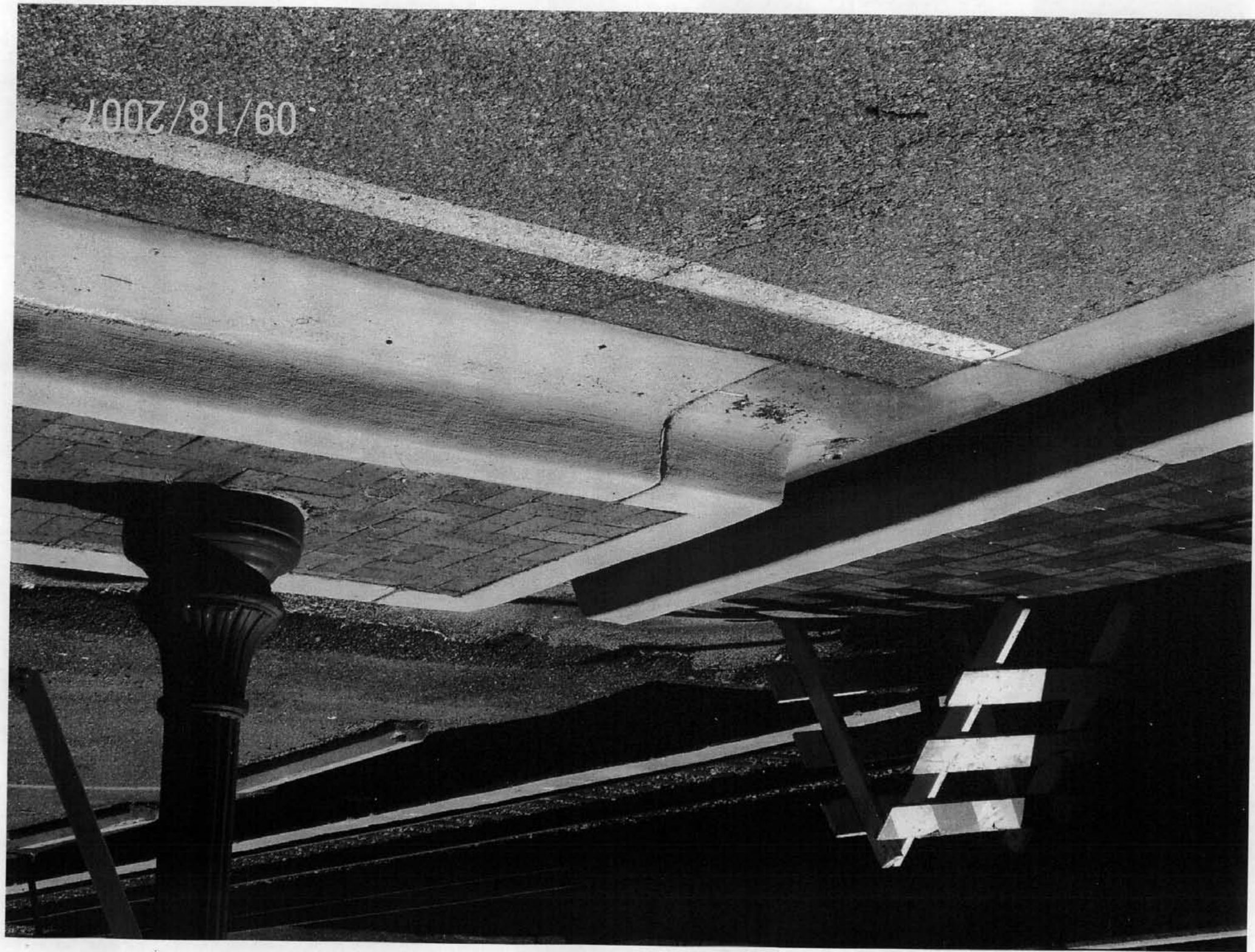
Sincerely,

A handwritten signature in black ink, reading "Vincent H. Berg". The signature is written in a cursive, flowing style with a large initial "V".

Vincent H. Berg, P.E.

Maryland Professional Engineer No. 12949

Enclosures





09/18/2007





Chris'
Steak House

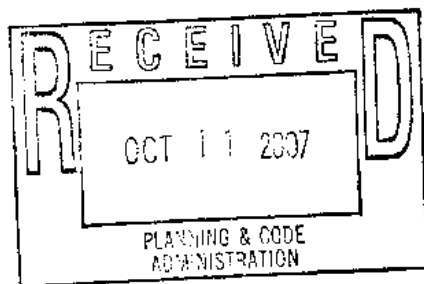
CARRY-OUT

RESERVED
PARKING
ONLY

RESERVED
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ONLY

09/18/2007





Tova Fliegel, owner
The Fliegel Center
109-119 E Diamond Ave.
Gaithersburg, MD 20877
October 10, 2007

Gaithersburg Planning Commission
14 Summit Ave
Gaithersburg, MD 20877

RE: SP-07-0015 -- 201 East Diamond Avenue

Dear Chairman Bauer and Commissioners:

My family and I are long-time owners of what is known as the Fliegel Center, 109-119 E Diamond Ave, in Old Towne. As a commercial property owner who wishes to redevelop, I fully support of Mr. Blessing's efforts to redevelop Chris' Steakhouse, 201 E Diamond Ave. His redevelopment only simplifies our future redevelopment. Thus, it is absolutely not my intention to burden the applicant.

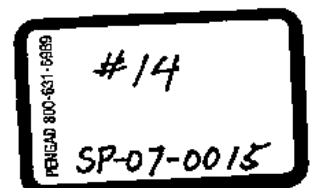
However, as an adjacent property owners, we have been negatively impacted by two long-term issues now arising before the Commission as Chris' is the first property along Lot 5 to be redeveloped. The first issue is that our lot has for decades absorbed the parking overflow of non-patrons from Chris' Steakhouse. The second is that stormwater runoff from 201 E Diamond has materially damaged structures on our property.

We now have an opportunity to resolve these issues as part of a holistic look at Old Towne redevelopment and I request your help in doing so.

Parking overflow

The idea that parking behind Chris' has been and always was sufficient is inaccurate. Similarly, the idea that the municipal garage will absorb any parking overflow is also inaccurate. Ours is the only privately owned lot on that side of East Diamond and so anyone wishing to park for longer than two hours (the time limit enforced on Lot 5), parks on our lot first. It's a problem of human behavior in this society to wish to be as close as possible to one's destination, and for reasons too complex to detail here, we have been unable to enforce the kinds of parking restrictions that most property owners would. (I would be happy to answer the Commission's questions on these difficulties.)

Chris' has not been a thriving business for several years, which may also be contributing to the impression that parking on Lot 5 is sufficient. But when Chris' was thriving, my father routinely complained to City staff, including former Planning Director Jennifer Russell, about Chris' customers parking on our lot and walking off-site. More recently, Chris' waitresses routinely parked on my lot and when asked why, they cited concerns with the safety of the municipal garage. Further, many of their customers, including



drivers of commercial vehicles which require multiple spaces, routinely parked on our lot, as well.

In addition, 125 E Diamond, the former Floral Arts Building, which also uses Lot 5 for parking, has recently been sold. Any new business that occupies that building is likely to require significantly more parking than Floral Arts, which was mostly delivery-based.

My costs for managing and maintaining the lot alone have increased more than five-fold in four years, my tenants businesses suffer (per the attached letters and emails) because of parking problems created by adjacent properties, and I am unable to promise them the amenities they thought they were getting at the time of lease signing.

In order to protect our property and tenants from further encroachment while still allowing the applicant to move forward with his plans, we ask that you approve the waiver with the condition as outlined.

Stormwater runoff

While the footprint for 201 E Diamond is not changing and falls below the requirement under section 8-22 of the City Code, the discharge of stormwater from that building is and has been significant as shown in the attached photographs. This is largely because the buildings along Lot 5 were constructed at a time when stormwater management plans were relatively unsophisticated.

But no new stormwater management planning has taken place along that side of E Diamond and, as a result, we have clearly been materially damaged because Chris' stormwater has flowed onto our property for literally decades (see photo).

Staff has suggested this is a drainage issue and that the stormwater can be redirected to the front of the new building. If that is the case, then attaching the requirement of a drainage study to the applicant's waiver really places no additional burden on him. He would essentially have to do such a study anyway.

We ask that the Commission not defer this issue to the site permitting stage, but approve the applicant's waiver on the condition that a drainage study be completed as outlined by Mr. Berg. Deferring this issue to site permitting would send a clear message to me and my family that the City intends to allow adjoining property owners to continue to direct stormwater onto our property damaging any structures in its path, and that the City will assume responsibility for doing so.

Thank you for your time and consideration.

Sincerely,



Tova Fliegel

October 6, 2007

Dear Mrs. Tova Fliegel,

I am writing to address the current parking space problem I face as business owner of the Cancun Restaurant.

I have been in this business location for nearly three years and parking for customers has always been a problem due to the low number of parking spaces available in this primarily business area. Neighboring business owners, their customers and other surrounding area customers often park in the spaces allocated for my business.

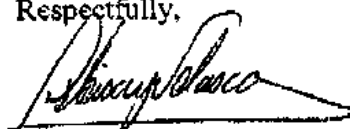
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Respectfully,



Tibisay Velasco
Cancun Restaurant Owner

ZODIAC EXPRESS INC.

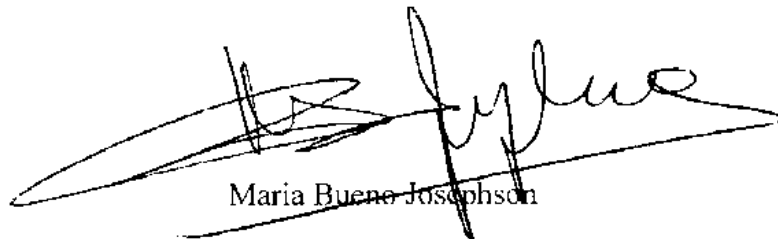
October 8, del 2007

To: Tova Fliegel
P.O.BOX 2022
Silver Spring MD 20915

To Whom it May Concern:

My name is Maria Bueno; I am the owner of the Zodiac Express Inc. located at 109 East Diamond Ave. I have strong concerns over a letter that I recently read from the county regarding 3- story construction that is in the works of being built in the same shopping district. I adamantly oppose this plan for this particular area because parking is already very limited as it is. The county plans to waive parking for the new renovations, and that will seriously affect Zodiac business. Customers like the luxury of parking and going fast. Once that convenience is taken away, they will go else where with their business. I have been a business owner in Gaithersburg for many, many years and would appreciate appropriate consideration be taken regarding this matter.

Cordially.



Maria Bueno-Josephson

**109 E.Diamond Ave
Gaithersburg, MD 20877
TEL . FAX: 301.947.8870**

Tova Fliegel

From: Edward Chi [echi25@msn.com]
Sent: Sunday, September 30, 2007 10:47 AM
To: Tova Fliegel
Subject: Fliegel Building - Parking Issues

Tova,

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Owner/Operator
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10/9/2007









2007/08/16 07:32



2007/08/16 07:33



2007/08/16 07:33



2007/08/09 08:09



2007/05/09 07:41





